

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 81 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DURLABHJI JERAMBHAI

Versus

TRIKAMJI KESHAVJI RATHOD

Appearance:

MR DD VYAS for Petitioner

MS KJ BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/03/2000

ORAL JUDGEMENT

#. Present Revision Application has been filed by the defendant-tenant against whom the plaintiff-landlord had filed a suit being Rent Suit No.. 592 of 1973 in the court of the learned Civil Judge (JD), Rajkot.

#. It is the case of the plaintiff that the defendant is the tenant of the suit premises known as "Keshavkrupa" building situated in Bhaktinagar locality in the city of Rajkot at a monthly rent of Rs. 160/- inclusive of taxes. That the tenant was in arrears of rent for more than six month from 1.10.72 to 31.3.73. It is further the case of the plaintiff that the conduct of the defendant amounts to nuisance. That he had changed the use of the suit premises. Therefore, the plaintiff-landlord served a notice on the defendant tenant under section 12(2) of the Bombay Rent Act and since the defendant tenant failed to comply with the said notice, aforesaid suit for possession was filed in the court of learned Civil Judge, (JD), Rajkot.

#. The defendant filed written statement and resisted the suit on various grounds. It was contended that the suit premises was rented out to the defendant at a monthly rent of Rs. 120/- and not at the rate of Rs. 168/-. That Rs. 120/- p.m. was not the standard rent. That in Civil Misc. Application No. 69 of 69 taking advantage of his helplessness, the plaintiff got the standard rent fixed at Rs.168/- p.m. and therefore, he had filed another application for fixation of standard rent. According to him the standard rent of the premisses should be between Rs. 70/- to Rs.75/- per month. He also denied that he was irregular in payment of the rent. On all these grounds the defendant - tenant prayed for the dismissal of the suit.

#. From the pleadings of the parties and after hearing both the sides, the learned Trial Judge framed various issues at exh.12.

#. The learned Trial Judge, after appreciating the evidence both oral and documentary, decreed the suit of the plaintiff-landlord on the ground of arrears of rent and fixed the standard rent of the suit premises at Rs. 168/- by his judgment and order dated 4.8.79 in Rent Suit No.593 of 1973. Aforesaid decree of the Trial Court was challenged by the defendant-tenant by filing Regular Civil Appeal No. 78 of 1979 before the District Court, Rajkot and the learned Jt. District Judge, Rajkot by his judgment and order dated 18.9.79 dismissed the Regular Civil Appeal No. 78 of 1979. At that stage present petitioner had filed Civil Revision Application No.1674 of 1980 before this Court. Said Revision Application was heard by this court and this court set aside the judgment and order of the Appellate Court by its judgment dated 5.10.1982 and the matter was remanded to the Lower Appellate Court with a direction to consider as to

whether the petitioner-tenant was entitled to statutory protection as provided under section 12(3)(b) of the Bombay Rent Act or not and whether an eviction decree could have been passed under section 12(3)(a) of the Bombay Rent Act. Consequently, the appeal was again heard by the learned Appellate Judge and the learned Appellate Judge by his judgment and order dated 30.12.1982 dismissed the said appeal. Aforesaid judgment and order of the learned Appellate Judge is impugned in this revision application.

#. At the time of hearing of this Revision Application it was submitted by Mr.Vyas learned advocate for the petitioner that the petitioner-tenant had deposited Rs.500/with the respondent - landlord and that amount is lying with the landlord and if that amount is considered, there would not be any deficit in payment of the rent during the pendency of the suit or appeal and therefore, the petitioner can be said to have been protected under section 12(3)(b) of the Bombay Rent Act.

#. It has been observed by the learned Appellate on page 8 of his judgment that even on the date of the judgment of the Trial Court, the amount was not fully deposited. The judgment was pronounced by the Trial Court on 4.8.79 fixing the standard rent at Rs.168/- p.m. and that the amount covering at the rate of Rs.168/- per month was paid in October 1979. Thereafter, the appeal was filed and after considering the statement produced by the appellant before the Appellate Court, it was found that even the amount of rent was paid periodically. The learned Appellate Judge has considered the payment both at the rate of Rs. 168/- which was ultimately fixed as standard rent by the Trial Court and at Rs. 120/- which was the interim rent fixed by the Trial Court. It has been found that the rent is paid on 10.12.80, 4.2.81, 11.3.81, 13.4.81, 4.8.81 (after four months), 22.10.81 (after two months, 9.3.82 (after four months), 29.6.82, 20.8.82. It was therefore found that the payment of rent was made at the interval of months. It was therefore, found by the learned Appellate Judge that there was no regular deposit of rent during the pendency of the appeal. It was also found by the learned Appellate Judge that in view of the judgment of the Apex Court and this Court reported in 19 GLR 502, (SC) 1007 and 1090, there was no regular payment of rent and that there was no compliance of section 12(3)(b) of the Bombay Rent Act. In that view of the matter it was found by the learned Appellate Judge that the petitioner was not entitled to

the benefit of section 12(3)(b) of the Bombay Rent Act. If the amount of Rs. 500/- is considered as payment of rent by the tenant, then also so far as regular deposit in Appellate Court is concerned, the tenant cannot be said to have complied with the same. Therefore, the learned Appellate Judge has rightly found that there was no regular deposit during the pendency of the Appeal. I find that no error of law is committed by the learned Appellate Judge which is required to be corrected by this Court in exercise of its revisional powers. This Revision Application is therefore, dismissed. Interim relief granted earlier stands vacated. Rule discharged. No order as to costs.

#. At this stage Mr. Vyas learned advocate for the petitioner has requested the court to give reasonable time to the petitioner to vacate the suit premises. Accordingly the decree for possession shall not be executed till 31.3.2002 on condition that the petitioner will file a usual undertaking before this court within six weeks from today. In that undertaking it should be clearly stated that the petitioner is in exclusive possession of the suit premises and that he will handover vacant and peaceful possession of the suit premises to the respondent landlord on or before the aforesaid date. The petitioner shall continue to pay the mesne profit regularly every month during the aforesaid period. If there is any breach of the said undertaking or if the petitioner fails to file the undertaking within the stipulated time, it will be open to the respondent landlord to execute the decree for possession forthwith.

(P.B.Majmudar.J)

govindan